

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LASHON POWELL

Plaintiff,

CIVIL ACTION NO. 05-CV-60127-DT

VS.

DISTRICT JUDGE JOHN CORBETT O'MEARA

PLANET X, INC.,

MAGISTRATE JUDGE MONA K. MAJZOUN

Defendant

**OPINION AND ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT'S MOTION TO COMPEL DISCOVERY**

Before the Court is Defendant's Motion to Compel Discovery, filed November 30, 2005, and referred to the undersigned on December 12, 2005 by the Honorable John Corbett O'Meara. Plaintiff filed his response on December 28, 2005, and Defendant filed a reply on January 6, 2006.

Defendant first served its first set of Interrogatories and Requests for Production of Documents on September 27, 2005. Plaintiff made no response to the Interrogatories or Requests for Production of Documents within the thirty day time period contemplated by Federal Rules of Civil Procedure 33 and 34. In two telephone discussions with defense counsel, Plaintiff's counsel promised to file responses to the Interrogatories and Requests for Production of Documents by dates certain in November 2005. As of the date Defendant's Motion was filed, Plaintiff had not responded to the Interrogatories or Requests for Production of Documents.

As of the date of Plaintiff's response to Defendant's Motion to Compel, Plaintiff had still not responded to Defendant's discovery requests. Plaintiff argues that Plaintiff's attorney was consumed with discovery and litigation demands in two other cases. However, rather than filing a motion for

extension of time with the Court, or accurately stating when Plaintiff could realistically respond to Defendant's discovery requests, Plaintiff's attorney repeatedly promised to respond to Defendant's requests promptly and then failed to do so. This course of conduct was not substantially justified, and eventually forced Defendant to file the instant motion.

As Plaintiff's failure to respond to discovery was not substantially justified, Federal Rule of Civil Procedure 37(a)(4) directs the Court to award the reasonable and necessary costs of litigating the instant motion to Defendant. Defendant states it incurred four hours of attorney time¹ in preparing this motion. The Court finds that one hour of attorney time should have been sufficient to prepare and file this exceptionally straightforward motion. The Court therefore **GRANTS** Defendant's motion in part and **DENIES** it in part, and directs Plaintiff to pay Defendant \$250 for costs incurred in connection with the litigation of this motion.

IT IS SO ORDERED.

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: April 27, 2006

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

Proof of Service

I hereby certify that a copy of this Opinion and Order was served upon Counsel of Record on this date April 27, 2006

s/ Lisa C. Bartlett

¹Defense counsel claims a \$250 hourly rate.

